

allowance. Accordingly, favorable reconsideration of all pending claims is respectfully requested.

The Office action identified pending claims 1-12 as being directed to seven (7) patentably distinct species of the claimed invention. Specifically, the Office action required an election of species between claim 4 (Species I), claim 5 (Species II), claim 6 (Species III), claim 7 (Species IV), claim 8 (Species V), claim 9 (Species VI) and claim 10 (Species VII).

As set forth in detail below, without denying that the claims are patentably distinct, applicant traverses this election requirement. Subject to this traversal and in accordance with the requirements of 37 C.F.R. § 1.143, applicants hereby provisionally elect claim 4 (Species I) for further prosecution in this application. Claims 1, 2, 3, 6, 7, 8, 9, 10, 11, 12, 13, and 14 read on claim 4. It is submitted that applicants' invention is directed to the method of forming a metal gate and while the ALD process and the remote plasma chemical vapor deposition process may be patentably distinct (species I and II) applicants' claimed barrier metals that are deposited (species III-VII) form part of the same process (species I or II). Applicants should not be required to file separate patent applications each directed to a particular barrier metal that is part of either process. Reconsideration and withdrawal of the restriction requirement is, however, requested in view of the following remarks.

It is respectfully submitted that the examiner has not met the burden required when issuing a restriction. M.P.E.P. § 808 sets forth an examiner's burden when making a restriction requirement, stating that "[e]very requirement to restrict has two aspects: (A) the reasons (as distinguished from

the mere statement of conclusion) why the inventions *as claimed* are either independent or distinct; and (B) the reasons for insisting upon the restriction therebetween....” The Office action conclusorially states that claims 4-10 are directed to “patentably distinct species of the claimed invention” and does not provide any reason for such a conclusion. Accordingly, it is respectfully submitted, the restriction is not proper because the applicants have not been afforded an opportunity to assess and respond to the examiner’s reasons for the restriction.

In summary, the Office action fails to provide reasoning as to why the inventions are distinct, as required in the M.P.E.P. Therefore, applicant requests that the requirement for election be withdrawn.

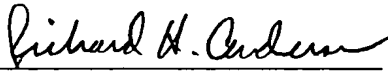
The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17 to Deposit Account No. 13-2855. A copy of this paper is enclosed.

Please refund any overpayment to Marshall, Gerstein & Borun at the address below.

Respectfully submitted,

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